

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ERIN POWERS, an individual,	§	Case No. 4:22-cv-03949
	§	
<i>Plaintiff and Counter-Defendant,</i>	§	
	§	
v.	§	
	§	
LAW OFFICES OF MARCOS &	§	
ASSOCIATES, P.C., a Texas professional	§	
corporation; and DOES 1 through 10,	§	
	§	
<i>Defendant and Counter-Plaintiff.</i>	§	

**COUNTER-DEFENDANT'S ANSWER TO
COUNTER-PLAINTIFF'S AMENDED COUNTERCLAIM**

Plaintiff and Counter-Defendant, Erin Powers (“Powers”), by and through his undersigned attorney, respectfully files this Answer to Defendant and Counter-Plaintiff Law Offices of Marcos & Associates, P.C.’s (“Marcos & Associates”) Amended Counterclaim. Powers responds to each paragraph of Marcos & Associates’ Amended Counterclaim in the same numerical order as the paragraphs contained therein.

FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim – Malicious Prosecution

1. Marcos & Associates’ Counterclaim for malicious prosecution fails to state a claim upon which relief can be granted. Marcos & Associates has failed to allege facts sufficient to establish any of the elements of malicious prosecution.

SECOND AFFIRMATIVE DEFENSE

Probable Cause – Malicious Prosecution

2. Powers has probable cause for each of its claims brought against Marcos & Associates. Marcos & Associates’ Counterclaim fails to allege facts sufficient to prove beyond a

preponderance of the evidence that no probable cause existed for the claims brought by Powers.

THIRD AFFIRMATIVE DEFENSE

No Claim has Accrued – Malicious Prosecution

3. The proceedings upon which Marcos & Associates’ bases its claim of malicious prosecution have not yet terminated, and therefore no claim for malicious prosecution could have yet accrued. Marcos & Associates’ claim is thus premature.

ANSWER TO AMENDED COUNTERCLAIM

4. Admitted that Powers owns the Subject Photograph, including the copyright and associated exclusive rights, and that it was registered with the United States Copyright Office on June 7, 2022 under U.S. Copyright Reg. No. Va 2-306-180. It is further admitted that Marcos & Associates used the Subject Photograph without Powers’ consent for commercial purposes as the key image on Marcos & Associates’ website at <https://attorneyjaviermarcos.com/>. Powers denies the remainder of this paragraph, including because Powers lacks sufficient information or knowledge to admit or deny the remainder.

5. Admitted that Powers’ counsel sent a letter, dated June 8, 2022, to Defendant to advise it of the copyright infringement claims at issue. Powers denies the remainder of this paragraph, including because Powers lacks sufficient information or knowledge to admit or deny the remainder.

6. Powers denies that Marcos & Associates is entitled to any of the relief requested in this paragraph.

7. Denied.

8. Powers denies that Marcos & Associates is entitled to any of the relief it requests in its “Prayer for Relief.”

Dated: March 8, 2023

Respectfully submitted,

By: /s/ Robert A. Cherry
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